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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,341	09/08/2003	Richard B. Klein	LYNK.107724	1667

5251 7590 05/27/2005  
SHOOK, HARDY & BACON LLP  
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KANSAS CITY,, MO 64108

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/657,341

Applicant(s)

KLEIN ET AL.

Examiner

Jennifer E. Novosad

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see page 4 of the amendment, filed November 9, 2004, with respect to the rejection of claim 1 (as set forth in the Office action mailed August 19, 2004), under Section 102, have been fully considered and are persuasive. *Therefore*, the rejection as set forth in the Office action mailed August 19, 2004 has been withdrawn and hence the indicated allowability of claim 1, as indicated in the final Office action mailed January 24, 2005, is hereby withdrawn. *However*, upon further consideration, a new grounds of rejection is made in view of the same reference to Malik, as set forth in the non-final Office action that follows.

It is noted that applicant amended claim 1 in the response filed November 9, 2004, and that the examiner did not previously reject the claim reciting "opposite ends... present an open space", as added by applicant in the November 9<sup>th</sup> amendment.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Design Patent No. Des. 381,225 (Malik '225).

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Malik '225 shows a shoe rack (see marked-up Figure 1 attached to the non-final Office action mailed August 19, 2004) for hanging on an upright surface (s) comprising first and second opposed side frame members (1 and 2) with each side frame member having a main body section (m) and a plurality of support arms (a - the portion of a, as labeled by the examiner, that defines the arm is only the straight angled portion, shown as a straight line in Figure 6, i.e., the arms, are defined by the examiner to, NOT include the vertical portion shown in Figure 6) projecting outwardly therefrom; each arm (a) has one end (o) adjacent to the main body section (m) and another free end (f) displaced from the frame member (1 and 2); each arm (a) has at least one loop (l) extending upwardly therefrom at a location between the one end (o) and the free end (f) having opposite ends, i.e., the portion of the "loop" above the arm has its ends where the left side of the loop meets the straight portion on the left side of Figure 6 and where the right side of the loop meets the straight portion in the middle of Figure 6, and an open space defined beneath the loop and above the support arm, i.e., as seen in Figure 6, the loop has an area located above the respective arm; a plurality of shoe retaining bars (b) extend between the side frame members (1 and 2) whereby the loops are capable of providing a barrier against lateral movement of shoes positioned on the bars (b) of the rack.

It is noted that the recitation "wherein said loops provide a barrier against lateral movement of shoes positioned on said retaining bars" is a functional recitation. *Hence*, a reference need only be capable of performing this function, i.e., a reference need not explicitly disclose or show this function, in order to meet this limitation of the claim. *Accordingly*, Malik '225 is considered to be capable of functioning in this way, i.e., "providing a lateral barrier" is considered to be a relative phrase.

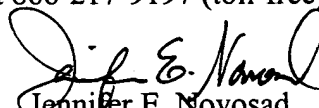
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Patent Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
May 25, 2005